

**SUPREME COURT MINUTES
TUESDAY, JUNE 2, 1998
LOS ANGELES, CALIFORNIA**

The Supreme Court of California convened in its courtroom in the Ronald Reagan State Office Building, Third Floor, South Tower, 300 South Spring Street, Los Angeles, California, on June 2, 1998, at 9:00 p.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Mosk, Kennard, Baxter, Werdegarr, Chin, and Brown.

Officers present: Robert F. Wandruff, Clerk; Harry Kinney, and Walter Grabowski, Bailiffs.

S057121 City of Moorpark et al., Petitioners

v.

Ventura County Superior Court, Respondent

Theresa Dillon, Real Party in Interest

Cause called. Harold A. Bridges argued for Petitioners.

Maury Mills, Jr. opened argument for Real Party in Interest.

Brad Seligman, appearing for Amicus Curiae Disability Rights Education and Defense Fund, continued argument for Real Party in Interest.

Mr. Bridges replied.

Cause submitted.

S057191 People, Respondent

v.

Lawrence Birks, Appellant

Cause called. Laura Halgren, Supervising Deputy Attorney General, argued for Respondent.

Howard J. Stechel argued for Appellant.

Ms. Halgren replied.

Cause submitted.

S058721 People, Respondent
 v.
 Scott Breverman, Appellant
 Cause called. Margaret Maxwell, Deputy Attorney General,
 argued for Respondent.
 Marcia A. Morrissey argued for Appellant.
 Ms. Maxwell replied.
 Cause submitted.

Court recessed until 1:30 p.m. this date.

Court reconvened pursuant to recess.
Members of the Court and Officers present as first shown.

S058909 State Compensation Insurance Fund, Petitioner
 v.
 Workers' Compensation Appeals Board et al., Respondents
 Cause called. Louis Harris, S.C.I.F. Staff Attorney, opened
 argument for Petitioner.
 Michael A. Marks, appearing for Amicus Curiae California
 Workers' Compensation Institute, continued argument for Petitioner.
 Jack M. Goldfarb opened argument for Respondent Adrienne
 Stuart.
 Elliot S. Berkowitz, appearing for Amicus Curiae California
 Applicants Attorney's Association, continued argument for
 Respondent Adrienne Stuart.
 Mr. Harris replied.
 Cause submitted.

S065546 Avalon Bay Foods et al., Petitioners
 v.
Workers' Compensation Appeals Board et al., Respondents
Cause called. Manda Olmstead opened argument for Respondent Moore.
William Herreras, appearing for Amicus Curiae California Applicants' Attorneys Association, continued argument for Respondent Moore.
Teresa L. Armstrong opened argument for Petitioners.
Michael Marks, appearing for Amicus Curiae California Workers' Compensation Institute, continued argument for Petitioners.
Ms. Olmstead replied.
Cause submitted.

S057084 People, Respondent
 v.
Justin Paul et al., Appellants
Cause called. Michael B. Dashjian argued for Appellant Paul.
Elizabeth A. Hartwig, Deputy Attorney General, argued for Respondent.
Mr. Dashjian replied.
Cause submitted.

Court recessed until 9:00 a.m., Wednesday, June 3, 1998.

S069125 In re Horce Edwards Kelly
 on
Habeas Corpus
The petition for writ of habeas corpus filed on March 31, 1998, is denied, claim 1 being denied in light of the denial of the "petition for writ of mandate, habeas corpus or other extraordinary relief, and emergency request for stay" filed in *Kelly v. Superior Court*, S070597.
Claim 4 E is denied on the ground that it was raised and rejected on appeal, and it comes within none of the exceptions that would

permit its reconsideration on habeas corpus. (*In re Waltreus* (1965) 62 Cal.2d 218, 225; *In re Harris* (1993) 5 Cal.4th 813, 829-841 [exceptions to *Waltreus* and related bars].)

Claims 3 B; 5; 6 B, C, D; 8; 13; 14; 15; 17; 18, A, C 1, 3, 4; 21; 23; and 25 are denied on the ground that they could have been, but were not, raised on appeal, and they come within none of the exceptions that would permit their consideration on habeas corpus: (*In re Dixon* (1953) 41 Cal.2d 756, 759; *In re Harris, supra*, 5 Cal.4th at p. 825, fn. 3, & pages 829-841 [exceptions to *Waltreus* and related bars].)

Claim 20 is denied because of the failure to object or otherwise raise the issue at trial. (*People v. Edwards* (1991) 54 Cal.3d 787, 827.)

All claims are also denied on the merits. (See *Harris v. Reed* (1989) 489 U.S. 255, 264, fn. 10.)

Mosk, J., and Brown, J., would deny the petition solely on the merits.

Kennard, J., would deny claim 1 without prejudice to petitioner's presentation of the issues it encompasses in this "petition for writ of mandate, habeas corpus or other extraordinary relief, and emergency request for stay".

S070597 Horace Edwards Kelly, Petitioner

v.

Marin County Superior Court, Respondent

People, Real Party in Interest

The "petition for writ of mandate, habeas corpus or other extraordinary relief, and emergency request for stay of execution," filed May 27, 1998, is DENIED. The application to file exhibit numbers 20, 21, 22, and 23 under seal is GRANTED.

Mosk, J., and Kennard, J., would grant the stay of execution of the judgment of death entered against Horace Edwards Kelly by the Superior Court of Riverside and San Bernardino and affirmed by this court in *People v. Kelly* (1990) 51 Cal.3d 931 and *People v. Kelly* (1992) 1 Cal.4th 495, respectively, pending final resolution of this matter.

S004725 People, Respondent

Crim. v.

25694 Royal Kenneth Hayes, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's reply brief is extended to and including June 1, 1998.

S014497 People, Respondent

v.

Dennis Harold Lawley, Appellant

On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's brief is extended to and including June 25, 1998.

No further extensions of time are contemplated.

S018665 People, Respondent

v.

Milton Otis Lewis, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's reply brief is extended to and including July 6, 1998.

S018814 People, Respondent

v.

Ramon Bojorquez Salcido, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to and including June 16, 1998.

No further extensions of time will be granted.

S021331 People, Respondent

v.

Curtis Lee Ervin, Appellant

On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's brief is extended to and including June 25, 1998.

S023628 People, Respondent

v.

John Sapp, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to and including July 27, 1998.

No further extensions of time are contemplated.

S028970 People, Respondent

v.

Richard Stitely, Appellant

On application of appellant and good cause appearing, it is ordered that the appellant is granted to and including July 28, 1998, to request correction of the record on appeal. Counsel for appellant is ordered to notify the Clerk of the Supreme Court in writing as soon as the act as to which the Court has granted an extension of time has been completed.

S029489 People, Respondent

v.

Alphonso Howard, Appellant

On application of appellant and good cause appearing, it is ordered that the appellant is granted to and including August 4, 1998, to request correction of the record on appeal. Counsel for appellant is ordered to notify the Clerk of the Supreme Court in writing as soon as the act as to which the Court has granted an extension of time has been completed.

S030553 People, Respondent

v.

George Brett Williams, Appellant

On application of appellant and good cause appearing, it is ordered that the appellant is granted to and including August 3, 1998, to request correction of the record on appeal. Counsel for appellant is ordered to notify the Clerk of the Surpeme Court in writing as soon as the act as to which the Court has granted an extension of time has been completed.

S032509 People, Respondent

v.

Erik Sanford Chatman, Appellant

On application of appellant and good cause appearing, it is ordered that the appellant is granted to and including June 12, 1998, to request correction of the record on appeal. Counsel for appellant is ordered to notify the Clerk of the Supreme Court in writing as soon as the act as to which the Court has granted an extension of time has been completed.

S033436 People, Respondent

v.

Albert Lewis and Anthony Cedric Oliver, Appellant

On application of appellant Anthony Cedric Oliver and good cause appearing, it is ordered that the appellant is granted to and including July 30, 1998, to request correction of the record on appeal. Counsel for appellant is ordered to notify the Clerk of the Supreme Court in writing as soon as the act as to which the Court has granted an extension of time has been completed.

S062533 In re James David Majors

on

Habeas Corpus

On application of petitioner and good cause appearing, it is ordered that the time to serve and file petitioner's reply to informal response to the petition for writ of habeas corpus is extended to and including June 30, 1998.

S063051 In re Lance Ian Osband

on

Habeas Corpus

On application of petitioner and good cause appearing, it is ordered that the time to serve and file petitioner's reply to informal response to the petition for writ of habeas corpus is extended to and including June 29, 1998.

S063733 In re Steven Livaditis
 on
 Habeas Corpus

On application of petitioner and good cause appearing, it is ordered that the time to serve and file petitioner's reply to informal response to the petition for writ of habeas corpus is extended to and including July 16, 1998.

S064558 People, Respondent
 v.
 Denise M. Martinez, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's reply brief on the merits is extended to and including June 5, 1998.

S065479 In re Ronald Anthony Jones
 on
 Habeas Corpus

On application of petitioner and good cause appearing, it is ordered that the time to serve and file petitioner's reply to informal response to the petition for writ of habeas corpus is extended to and including July 20, 1998.

S065541 In re Keith Anthony Somers
 on
 Habeas Corpus

On application of Attorney General and good cause appearing, it is ordered that the time to serve and file informal response to the petition for writ of habeas corpus is extended to and including June 30, 1998.

S066681 In re Robert Stansbury
 on
 Habeas Corpus

On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's informal response to the petition for writ of habeas corpus is extended to and including August 3, 1998.

- S066735 Cel-Tech Communications, Incorporated, et al., Appellants
 v.
 Los Angeles Cellular Telephone Company, Respondent
 On application of all parties and good cause appearing, it is
 ordered that the time to serve and file reply briefs on the merits is
 extended to and including June 15, 1998.
- S066746 In re Brian Stinson
 on
 Habeas Corpus
 On application of Attorney General and good cause appearing, it
 is ordered that the time to serve and file informal response to the
 petition for writ of habeas corpus is extended to and including
 June 15, 1998.
- S067462 Mercury Insurance Group, Petitioner
 v.
 San Bernardino County Superior Court, Respondent
 Ronald A. Wooster et al., Real Parties in Interest
 On application of petitioner and good cause appearing, it is
 ordered that the time to serve and file petitioner's answer brief on
 the merits is extended to and including June 5, 1998.
- S067672 People, Respondent
 v.
 Michael Daniel Sargent, Sr., Appellant
 On application of appellant and good cause appearing, it is
 ordered that the time to serve and file appellant's answer brief on the
 merits is extended to and including June 23, 1998.
- S066764 People, Respondent
 v.
 Russell Anzalone, Appellant
 Upon request of appellant for appointment of counsel, Kent
 Baker is hereby appointed to represent appellant on his appeal now
 pending in this court.
 Appellant's brief on the merits shall be served and filed on or
 before thirty (30) days from the date of this order.

S070470 William Doss et al., Petitioners

v.

Daniel E. Lungren et al., Respondents

The above entitled matter is transferred to the Court of Appeal, Second Appellate District, Division Seven, for consideration in light of *Hagan v. Superior Court*, (1962) 57 Cal.2d 767. In the event the Court of Appeal determines that this petition is substantially identical to a prior petition, the repetitious petition shall be denied.

Inquiry Concerning Judge Robert C. Bradley, No. 147

Upon the request of the Commission on Judicial Performance for the appointment of three special masters in the above proceedings, the following judges, selected by the commission from a list submitted by the Supreme Court, are hereby appointed special masters to hear and take evidence in such matter and report thereon to the commission. (See rule 121, Rules of Com. on Jud. Performance.)

1. Hon. William A. Stone
Court of Appeal, Fifth Appellate District
2. Hon. Judith L. Haller
Court of Appeal, Fourth Appellate District, Div. One
3. Hon. Richard Patsey
Contra Costa County Superior Court

Justice Stone is designated presiding special master.

Dated: June 2, 1998.

George, C.J.

S068106 In re John Ingrahamm Meeker on Discipline

Application for stay is denied. (California Rules of Court, rule 951(e); State Bar, Rules of Procedure, rule 321.)